

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219209

DATE: April 29, 1986

MATTER OF: Pradeep Sinha - Relocation Expenses - Short
Distance Transfer

DIGEST:

New appointee to manpower shortage position may not be reimbursed for relocation expenses since change of residence, which was a relatively short distance, was not made incident to his appointment. Additionally, employee may not be reimbursed for expenses based on subsequent transfer which was also for only a short distance. Reimbursement is not proper even though first agency initially issued travel orders erroneously authorizing relocation expenses prior to its decision that appointee had not met the requirements for short distance moves in FTR paragraphs 2-1.3 and 2-1.5(b). Findings of both agencies that reimbursement requirements for short distance transfers were not met are sustained as not arbitrary, capricious or an abuse of discretion.

This action responds to a claim filed with our Office by Mr. Pradeep Sinha requesting reimbursement of expenses associated with his relocation from Pasadena, Maryland, to the Laurel/South Columbia vicinity of Maryland. Mr. Sinha's earlier requests to the agencies where he is, or has been, employed have been denied. We conclude that Mr. Sinha is not entitled to the requested reimbursement for the reasons set forth below.

FACTS

On April 1, 1985, Mr. Sinha was appointed to a manpower shortage position with the Voice of America (VOA), United States Information Agency, in Washington, D.C. At the time of his selection for this appointment he resided in Pasadena, Maryland. In June 1985, Mr. Sinha moved from his residence in Pasadena, Maryland, to a home in the vicinity of Laurel/South Columbia, Maryland.

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Prior to his appointment, VOA authorized Mr. Sinha various moving expenses by a travel order dated March 13, 1985. The VOA states that their initial authorization was based on erroneous assurances they received from the General Services Administration that reimbursement would be proper. Subsequently, VOA's Office of Administration determined that Mr. Sinha's move did not meet the requirements for short distance moves established in the Federal Travel Regulations, FPMR 101-7 (September 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR). On May 21, 1985, that office recommended that Mr. Sinha's request for payment of relocation expenses be denied.

About a month after his appointment to VOA, Mr. Sinha accepted a transfer, in the interest of the government, to a position with the National Aeronautics and Space Administration (NASA), at the Goddard Space Flight Center (GSFC) in Greenbelt, Maryland. This transfer was effective April 28, 1985. Before his transfer to GSFC, NASA officials informed Mr. Sinha that he would not be authorized reimbursement of relocation expenses.

At this point, Mr. Sinha asserts that one of the two agencies involved should reimburse him for the expenses he incurred in connection with his move from Pasadena to the Laurel/South Columbia area. He suggests that these relocation expenses should be considered incurred incident to his appointment with VOA, or in the alternative, incident to his transfer from VOA to NASA. For the following reasons, we do not agree.

DISCUSSION

Although it is generally true that new appointees are not entitled to reimbursement for relocation expenses, 5 U.S.C. § 5723 and the regulations issued thereunder grant agencies discretionary authority to pay such expenses of a person appointed to a manpower shortage position. See FTR 2-1.5f. We note that the relocation allowances to which Mr. Sinha would be entitled as a manpower shortage appointee are not as extensive as the allowances that are available when an employee transfers from one agency to another, or transfers within an agency.

When an appointee to a manpower shortage position resides at the time of his appointment in the same general local or metropolitan area where his first duty station is located, the authority for paying travel, transportation, and relocation expenses is contained in FTR 2-1.5(b)(2).

Regarding such relocations, this section provides:

"* * * travel and transportation * * * shall be authorized only when the agency determines that the relocation of residence was incident to the appointment. To the extent applicable, the principles prescribed for transferred employees shall be considered in making this determination."

The principles referred to in the above quotation governing the short distance relocations of transferred employees are contained in FTR 2-1.5(b)(1). This section provides guidelines for agencies to follow in determining whether a transferred employee's short-distance relocation is incident to his change of duty station. In making this determination an agency is advised to consider various factors including the comparative commuting times and distances between the employee's old residence and old duty station, his old residence and new duty station, and his new residence and new duty station. This section further provides:

"* * * Ordinarily, a relocation of residence shall not be considered as incident to a change of official station unless the one-way commuting distance from the old residence to the new official station is at least 10 miles greater than from the old residence to the old official station. Even then, circumstances surrounding a particular case (e.g., relative commuting time) may suggest that the move of residence was not incident to the change of official station."

The VOA denied Mr. Sinha's request for reimbursement based on the fact that his move from Pasadena to Laurel/South Columbia did not reduce his commute to his VOA duty station in Washington, D.C., by at least 10 miles. The VOA states they contacted the American Automobile Association (AAA), and determined that the distance from Pasadena to Mr. Sinha's former place of work is 28 miles,

and the distance from Pasadena to Washington, D.C., is 34 miles. Thus, Mr. Sinha's commute increased by only 6 miles.

Mr. Sinha was denied reimbursement by NASA on a similar basis. Officials of NASA state that the distance from Pasadena to Mr. Sinha's current duty station in Greenbelt, Maryland, is 8 miles less than the distance from Pasadena to his former VOA duty station in Washington, D.C. They state that Pasadena is considered to be within the normal commuting area for NASA employees working in Greenbelt. Accordingly, they have denied Mr. Sinha reimbursement for his relocation expenses.

Although the administrative reports we received from VOA and NASA do not expressly state that Mr. Sinha's move was not made incident to his appointment or transfer, our Office has stated that the continued denial of requests for reimbursement of relocation expenses on grounds of insufficient savings of time and distance is tantamount to a finding that the relocation of the employee's residence was not incident to the transfer of duty station. David E. Meisner, B-187162, February 9, 1977.

We have also consistently held that in short distance relocations, the applicable statutes and regulations give an agency broad discretion in determining whether an employee's move from one residence to another is incident to the change of official station. 51 Comp. Gen. 187 (1971); David E. Meisner, supra; Stanley Jeffress Williams, B-184029, January 26, 1976. Unless such a determination is made by the agency, no basis for payment of the claim exists. 51 Comp. Gen. 187, supra. In light of the refusal of VOA and NASA to reimburse Mr. Sinha because of the relatively short distances between Mr. Sinha's old and new residences and his former and current places of employment, we must conclude that both agencies found that Mr. Sinha's relocation was not made incident to his appointment to a position with VOA or to his transfer from VOA to NASA, but for his own convenience. The rule that a determination that a relocation in the case of a short distance transfer must be incident to that transfer applies to new shortage category appointees as well. David L. Crockett, B-191393, May 11, 1978. Therefore, payment of his relocation expenses may not be authorized.

We note that Mr. Sinha has taken exception to the statement of VOA and NASA concerning the distances involved. Mr. Sinha states that the distance from Pasadena to Washington, D.C., is 50 miles; from Pasadena to Columbia is 30 miles; and from Columbia to Washington is 25 miles. His correspondence with our Office does not indicate the distances from his former and current residences to his current duty station in Greenbelt, Maryland.

Although Mr. Sinha has not presented us with the basis for his assertions, it is unlikely that our decision would change even if the precise distances involved were determined to be somewhat different than those VOA obtained from AAA. In this regard, we refer again to paragraph 2-1.5(b) of the FTR, quoted above. This paragraph establishes that the employee's one-way commute must ordinarily increase by a minimum of 10 miles before the relocation may be considered incident to a transfer. Even when the 10-mile criterion is met, the agency has broad discretion to consider other circumstances surrounding a particular case to determine whether a move is incident to the change of official station. We do not view the precise difference between the distances of the old and new commutes as an inflexible benchmark which, when exceeding 10 miles, entitles the employee to a determination that the move was made incident to a transfer. Rather it is one factor an agency should consider in making that determination. We conclude that, in this situation, the agencies involved have considered various factors, including the distances of the commutes, and have determined that Mr. Sinha's change of residence was not made incident to his appointment or transfer. On the record before us, we cannot say that the actions of either agency were arbitrary, capricious or an abuse of discretion, and, therefore, we will affirm those actions. See Roger A. Nichols, B-188083, June 27, 1977.

We understand Mr. Sinha's disappointment in light of the initial authorization for moving expenses which he received. It is unfortunate that VOA gave him erroneous information on this issue. Nonetheless, it is a well-established rule of law that a government officer or employee may not obligate the United States in excess of what is authorized by law or regulation. See Edward W. Krawiec, B-197323, July 1, 1980, and cases cited therein. Accordingly, Mr. Sinha may not be reimbursed for expenses incident to his change of residence.

for Milton J. Jordan
Comptroller General
of the United States